IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2607 of 2004
To
FIRST APPEAL No. 2619 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAVJIBHAI CHEHUBHAI - Appellant(s)
Versus
SPL.LAQ OFFICER & 1 - Defendant(s)

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Appearance :
MR YATIN SONI for Appellant(s) : 1,1.2.1 MR HITESH B PATEL for Appellant(s) : 1,1.2.1
MISS KIRAN PANDEY, AGP for Defendant(s) : 1,
MR SAURABH G AMIN for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 22/03/2007

ORAL COMMON JUDGMENT :

The original claimants of Land Acquisition Case No. 46 of 2002

and its allied cases, have filed these appeals for enhancement in the quantm of compensation awarded to them by the 2nd Joint Civil Judge [S.D.], Ahmedabad [Rural] vide judgment and award dated 26/3/2004. Since these cases have been decided by common judgment, these appeals are also heard together and they are now being disposed of by this common judgment.

2. The lands in question are agricultural lands and they are situated in village Makhiyav, Taluka Sanand, District Ahmedabad. The lands have been acquired for construction of Gokulpura Approach Road. Notification under section 4(1) of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act'] was published on 14/3/1997. The declaration under section 6 was published on 16/8/1997. After complying with all the necessary requirements, the Special Land Acquisition Officer made award under section 11 on 15/3/2000. He determined the market value at Rs.12/- per sq.mtr.

2.1. Since the claimants were not satisfied with the quantum determined by the Special Land Acquisition Officer, they submitted reference application to the Collector under section 18 of the Act, which ultimately culminated into the aforesaid reference cases. The Reference Court, on the basis of the material produced before it, determined the market value of the land at Rs.48/- per sq.mtr., by its award dated 26/3/2004. Thus, the Reference Court granted compensation of Rs.36/- per sq.mtr., as an additional amount. The claimants being dissatisfied with the quantum determined by the Reference Court, have now approached this Court by filing these appeals.

2.2. I have heard Mr. Yatin Soni, learned advocate for the appellants, Mr. Saurabh G Amin, learned advocate for respondent no. 2 and Miss Kiran Pandey, Ld. AGP for respondent no. 1. It is submitted by Mr. Soni that the Reference Court has not properly appreciated the evidence and other material produced on record and has not properly assessed the market value. He has submitted that village Makhiyav is in the vicinity of Sanand town and it is having all the basic facilities. He has submitted that in respect of lands at Sanand, award of Rs.90/- per sq.mtr., was made. He has placed reliance on the order of the Division Bench of this Court dated 14/8/2003 passed in First Appeal No. 1495 of 2003 and its cognate appeals. In that case, rate of compensation is fixed at Rs.70/- per sq.mtr., in respect of the lands of village Kuvar, which is adjoining to village Makhiyav. He, therefore, submitted that compensation at the rate of Rs.70/- per sq.mtr., be awarded.

2.3. As against that, Mr. Saurabh Amin has submitted that there is no evidence whatsoever on record produced by the claimants to substantiate their claim. According to him, the Special Land Acquisition Officer has kept in view the sale instances which are relevant for the purpose of determining the market value in this case and on the basis of the same, Rs.12/- per sq.mtr., was fixed by him. According to Mr. Amin, the order of the High Court was made in special circumstances of that case and it was not required to be cited as precedent as per the observation made therein by the Court. Miss Pandey, has more or less adopted the submissions of Mr. Amin.

3. I have carefully considered the submissions of learned advocates. I have also carefully perused the record of the case and in particular the oral evidence of the witnesses examined before the Reference Court. Mavjibhai Chehubhai has been examined by the claimants and his evidence is at Exh. 14. He is the owner of land bearing survey no. 176 of Makhiyav. He has deposed that he had seen the other lands under acquisition and his lands were very fertile and having irrigation facility. According to him, they obtained crop worth Rs.25,000/- to Rs.30,000/- after deducting all the expenses. According to him, his village is around 6 Kms., away from Sanand town. He has stated that it is connected with important centres with transport facility. He has produced on record at Exh. 13 the order of this Court referred to above. He has stated that their lands are situated at more advantageous point than the lands of Kuvar. He has further stated that the boundaries of lands to Kuvar and Makhiyav are touching each other. In the cross-examination, he has stated that his village is situated about 10 Kms., away from Sanand. He has further stated that he does not have any irrigation facility, but immediately he has added that he draws water from the adjoining field.

3.1. The evidence of this witness shows that the lands of the present appellants have been acquired for the purpose of construction of road. The lands of village Kuvar were also acquired for the same purpose. He has stated that the road runs through their fields and as a result of the same, their lands are divided into two parts causing considerable financial loss. It may be seen

here that the notification under section 4 in respect of the lands in question was published on 14/3/1997; whereas in the case of Kuvar village it was published on 21/7/1997. They are almost contemporary. In respect of lands of Kuvar the Reference Court had determined the market value at Rs.90/- per sq.mtr., which was challenged before this Court by the Government. The order referred to above, shows that the Government at the time of hearing, offered Rs.70/- per sq.mtr., which was accepted by the claimants of that case. In view of the same, the Division Bench observed that this may not be cited as precedent. However, considering the fact that in the case of Sanand Rs.90/- per sq.mtr., has been determined and the lands of village Kuvar, which are much nearer to Sanand, the Government has offered Rs.70/- per sq.mtr., in absence of any other cogent evidence, these factors can be kept in view. The lands in question are situated further away from Sanand. However, as per the witness, the boundaries of lands of both the villages are touching each other. This fact is not challenged by the otherside. In the cross-examination no question is put to the witness to controvert this fact. The respondents have not examined any witness to substantiate their version. They have also not brought on record the relevant sale instances which may support their case. In view of the same, there is no alternative for me but to keep in view the aforesaid market value of Sanand and Kuvar. Since the lands of village Makhiyav are at a distance of about 10 to 12 Kms., from Sanand as per the say of witness himself, in my opinion, Rs.60/- per sq.mtr., can be the appropriate market value of the lands under acquisition.

I, therefore, enhance the compensation from Rs.48/- per sq.mtr., to Rs.60/- per sq.mtr., which the respondents are liable to pay to the appellants together with all the incidental statutory benefits including interest. These appeals are, therefore, partly allowed.

[Akshay H Mehta, J.]

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